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HOUSE BILL 354

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO HEALTH; AMENDING, REPEALING AND ENACTING SECTIONS
OF THE CLEAN INDOOR AIR ACT TO CONTROL LOCATIONS OF TOBACCO
SMOKING; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-16-2 NMSA 1978 (being Laws 1985,
Chapter 85, Section 2) is amended to read:

"24-16-2. DECLARATION OF POLICY AND INTENT--PUBLIC
HEALTH.--The legislature finds and declares that the smoking of
tobacco [~~or any other weed or plant~~] is a positive danger to
health [~~and a health hazard to those who are present in
enclosed places and that smoking in such areas should be
confined to designated smoking areas~~] and that exposure to
secondhand smoke significantly increases the incidence risk for
heart disease, cancer and respiratory disease in smokers and

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1 non-smokers alike, while furthermore increasing the risk for
2 low-birthweight babies born to women who are exposed to
3 secondhand smoke. The legislature further declares its
4 intention to protect the public health from such hazards in
5 public places and places of employment [~~without imposing~~
6 ~~exorbitant costs on persons in management and control of the~~
7 ~~places subject to~~] and establish minimum standards for the
8 regulation of tobacco smoke as defined by the Clean Indoor Air
9 Act. [~~It is not the intent of the legislature to preempt the~~
10 ~~field of regulation of smoking in public from the enactment of~~
11 ~~ordinances by local governing bodies which are not inconsistent~~
12 ~~with the Clean Indoor Air Act.~~]"

13 Section 2. Section 24-16-3 NMSA 1978 (being Laws 1985,
14 Chapter 85, Section 3) is amended to read:

15 "24-16-3. DEFINITIONS.--As used in the Clean Indoor Air
16 Act:

17 [A. ~~"employer" means the state or any political~~
18 ~~subdivision of the state who employs the services of more than~~
19 ~~fifteen persons;~~

20 B. ~~"place of employment" means any enclosed indoor~~
21 ~~area under the control of a public employer which employees~~
22 ~~normally frequent during the course of employment, including~~
23 ~~but not limited to work areas, employee lounges, conference~~
24 ~~rooms and employee cafeterias;~~

25 C. ~~"public meeting" means any meeting required by~~

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1 ~~law to be an open meeting;~~

2 ~~D. "public place" means any enclosed indoor area in~~
3 ~~a building owned or leased by the state or any of its political~~
4 ~~subdivisions;~~

5 ~~E. "smoke" or "smoking" means the carrying or~~
6 ~~holding of a lighted pipe, cigar or cigarette of any kind or~~
7 ~~any other lighted smoking equipment or the lighting or emitting~~
8 ~~or exhaling the smoke of a pipe, cigar or cigarette of any~~
9 ~~kind; and~~

10 ~~F. "smoking-permitted area" means that portion of a~~
11 ~~public place in which smoking may be permitted.]~~

12 A. "department" means the department of health;

13 B. "designated outdoor smoking area" means any area
14 designated by an employer or manager outside an enclosed indoor
15 workplace or enclosed indoor public place where smoking is
16 permitted, provided that the following conditions are
17 maintained:

18 (1) smoking shall not be permitted near any
19 building entrance, including a door, window or ventilation
20 system of any facility where smoking is prohibited under the
21 provisions of the Clean Indoor Air Act, so as to disallow
22 secondhand smoke from entering the enclosed indoor workplace or
23 enclosed indoor public place; and

24 (2) employees or members of the general public
25 are not required to walk through the smoking area to gain

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1 entrance to the enclosed indoor workplace or enclosed indoor
2 public place;

3 C. "designated smoking guest rooms at public
4 lodging establishments" means the sleeping rooms and directly
5 associated private areas, such as bathrooms, living rooms and
6 kitchen areas, if any, rented to guests for their exclusive
7 transient occupancy in public lodging establishments, including
8 hotels, motels, resort condominiums, transient apartments,
9 transient lodging establishments, rooming houses, boarding
10 houses, resort dwellings, bed and breakfast inns and similar
11 lodgings and designated by the person having management
12 authority over such public lodging establishment as rooms in
13 which smoking may be permitted;

14 D. "employer" means a person, partnership or
15 corporation that employs the services of one or more persons;

16 E. "enclosed" means any interior space
17 predominantly or totally bounded on all sides and above by
18 physical barriers, regardless of whether such barriers consist
19 of or include uncovered openings, screened or otherwise
20 partially covered openings or open or closed windows;

21 F. "indoor public place" means the enclosed area
22 within any governmental or non-governmental place to which the
23 public is invited or in which the public is permitted
24 regardless of whether work or public business, meetings or
25 hearings are occurring at any given time;

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1 G. "indoor workplace" means any enclosed place
2 where one or more persons engages in work, including lobbies,
3 reception areas, offices, conference and meeting rooms,
4 employee cafeterias and lunchrooms, break rooms and employee
5 lounges, classrooms, auditoria, hallways, stairways, waiting
6 areas, elevators and rest rooms and includes all indoor
7 workplaces and enclosed parts without regard to whether work is
8 occurring at any given time;

9 H. "private club" means any nonprofit group,
10 including fraternal organizations and an auxiliary or
11 subsidiary group organized and operated under the laws of this
12 state with a membership of not less than fifty members who pay
13 membership dues at the rate of not less than five dollars
14 (\$5.00) per year and who, under the constitution and bylaws of
15 the club, have all voting rights and full membership privileges
16 and is the owner or lessor of premises used exclusively for
17 club purposes operated solely for recreation, social,
18 patriotic, political, benevolent or athletic purposes and has
19 been granted an exemption by the United States from the payment
20 of federal income tax as a club under the provisions of Section
21 501 of the Internal Revenue Code of 1986, as amended;

22 I. "restaurant" means a coffee shop, cafeteria,
23 private and public school cafeteria or eating establishment and
24 any other eating establishment that gives or offers for sale
25 food to the public, patrons or employees, including kitchens

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1 and catering facilities in which food is prepared on the
2 premises for serving elsewhere;

3 J. "retail tobacco store" means a retail store
4 utilized primarily for the sale of tobacco products and
5 accessories and in which the sale of other products is merely
6 incidental;

7 K. "secondhand smoke" means smoke emitted from
8 lighted, smoldering or burning tobacco when the smoker is not
9 inhaling, smoke emitted at the mouthpiece during puff drawing
10 and smoke exhaled by the smoker;

11 L. "smokefree area" means any building or other
12 enclosed space where smoking is prohibited;

13 M. "smoking" means inhaling, exhaling, burning,
14 carrying or holding any lighted tobacco product, including all
15 types of cigarettes, cigars and pipes and any other lighted
16 tobacco product;

17 N. "smoking-permitted area" means any building or
18 other enclosed space where smoking may be permitted provided
19 that secondhand smoke does not infiltrate any area where
20 smoking is prohibited pursuant to the Clean Indoor Air Act; and

21 O. "stand-alone bar" means any premises:

22 (1) licensed in accordance with the Liquor
23 Control Act and in which the premises are devoted, during any
24 time of operation, predominantly to the sale of alcoholic
25 beverages that are served for consumption on the licensed

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1 premises;

2 (2) in which the serving of food is merely
3 incidental to the consumption of alcoholic beverages;

4 (3) in which the premises derives no more than
5 fifty percent of its gross revenue from the sale of food on the
6 licensed premises; and

7 (4) in which people under twenty-one years of
8 age are not permitted in all or part of the premises during all
9 or part of the hours of operation of the premises, except as
10 provided by the regulations of the alcohol and gaming division
11 of the regulation and licensing department."

12 Section 3. Section 24-16-4 NMSA 1978 (being Laws 1985,
13 Chapter 85, Section 4, as amended) is amended to read:

14 "SMOKING PROHIBITED [~~EXCEPT IN PERMITTED AREAS~~]. --

15 A. It is unlawful for a person to smoke in [a
16 public place or at a public meeting except in smoking-permitted
17 areas] any enclosed indoor workplace or enclosed indoor public
18 place or in buses, taxicabs or other means of public transit
19 not specifically exempted pursuant to the Clean Indoor Air Act.

20 B. No part of the state capitol or capitol north
21 shall be designated as a smoking-permitted area."

22 Section 4. A new section of the Clean Indoor Air Act is
23 enacted to read:

24 "[NEW MATERIAL] SMOKING-PERMITTED AREAS. -- Notwithstanding
25 any other provision of the Clean Indoor Air Act, smoking-

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1 permitted areas shall include the following:

2 A. a private residence whenever it is not being
3 used commercially to provide child care, adult care or health
4 care or any combination of the above;

5 B. a retail tobacco store;

6 C. a stand-alone bar;

7 D. a state-licensed gaming facility, casino or
8 bingo parlor;

9 E. an enclosed indoor workplace to the extent that
10 tobacco smoking is an integral part of a smoking cessation
11 program approved by the department or medical or scientific
12 research conducted there and in which each room in which
13 tobacco smoking is permitted must comply with signage
14 requirements;

15 F. designated outdoor smoking areas;

16 G. private clubs;

17 H. a limousine under private hire; and

18 I. hotel and motel rooms that are rented to guests
19 and are designated as smoking rooms; provided that not more
20 than twenty-five percent of rooms rented to guests in a hotel
21 or motel may be so designated. "

22 Section 5. A new section of the Clean Indoor Air Act is
23 enacted to read:

24 "[NEW MATERIAL] PROHIBITION OF SMOKING NEAR ENTRANCES,
25 WINDOWS AND VENTILATION SYSTEMS. --Smoking shall be prohibited

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1 near entrances, windows and ventilation systems of all
2 worksites and public places where smoking is prohibited by the
3 Clean Indoor Air Act. An individual who owns, manages,
4 operates or otherwise controls the use of any premises subject
5 to the provisions of the Clean Indoor Air Act shall establish a
6 no-smoking area that extends a reasonable distance from any
7 entrances, windows and ventilation systems to any enclosed
8 areas where smoking is prohibited, and the reasonable distance
9 shall be a distance sufficient to ensure that persons entering
10 or leaving the building or facility shall not be subjected to
11 breathing tobacco smoke and to ensure that tobacco smoke does
12 not enter the building or facility through entrances, windows,
13 ventilation systems or any other means. "

14 Section 6. A new section of the Clean Indoor Air Act is
15 enacted to read:

16 "[NEW MATERIAL] RESPONSIBILITIES OF EMPLOYERS-- POSTING OF
17 REQUIRED SIGNS. --

18 A. Employers shall provide that their places of
19 employment meet the requirements of the Clean Indoor Air Act.

20 B. An employer shall adopt, implement, post and
21 maintain a written smoking policy pursuant to the Clean Indoor
22 Air Act.

23 C. To advise persons of the existence of smokefree
24 areas or smoking-permitted areas, signs shall be posted as
25 follows:

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1 (1) for all areas of an enclosed indoor
2 workplace or enclosed indoor public place where smoking is
3 prohibited pursuant to the Clean Indoor Air Act, "NO SMOKING"
4 signs, with letters of not less than one inch in height or the
5 international "NO SMOKING" symbol consisting of a pictorial
6 representation of a burning cigarette centered within a red
7 circle with a red bar across it, shall be posted where it is
8 clear, conspicuous and easily legible in all areas where
9 smoking is prohibited, and posting of signs shall be the
10 responsibility of the owner, operator, manager or other person
11 having control of such building or other place, and signs of
12 the appropriate type shall also be placed at all outdoor
13 entrances to such areas;

14 (2) for smoking-permitted areas pursuant to
15 the Clean Indoor Air Act, text signs reading "SMOKING
16 PERMITTED" with letters of not less than one inch in height, or
17 the international smoking symbol consisting of a pictorial
18 representation of a burning cigarette centered within a red
19 circle, shall be posted where it is clear, conspicuous and
20 easily legible in all smoking-permitted areas, and posting of
21 signs shall be the responsibility of the owner, operator,
22 manager or other person having control of such building or
23 other place, and signs of the appropriate type shall also be
24 placed at all outdoor entrances to such areas;

25 (3) every theater owner, manager or operator

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1 shall conspicuously post signs in the lobby stating that
2 smoking is prohibited within the theater or auditorium; and

3 (4) every restaurant shall have posted at
4 every public entrance a conspicuous sign clearly stating that
5 smoking is prohibited in accordance with the Clean Indoor Air
6 Act. "

7 Section 7. A new section of the Clean Indoor Air Act is
8 enacted to read:

9 "[NEW MATERIAL] ENFORCEMENT. --

10 A. The local fire or police department with
11 appropriate jurisdiction over the location where the unlawful
12 act occurs shall enforce the Clean Indoor Air Act by citation.

13 B. A person may register a complaint under this
14 ordinance to initiate enforcement with the department or the
15 local fire or police department.

16 C. The designated enforcement agencies may inspect
17 an establishment for compliance with this ordinance. "

18 Section 8. A new section of the Clean Indoor Air Act is
19 enacted to read:

20 "[NEW MATERIAL] VIOLATIONS. --It is unlawful for any person
21 who owns, manages, operates or otherwise controls the use of
22 any premises subject to regulation under the Clean Indoor Air
23 Act to violate any of its provisions. The owner, manager or
24 operator of any premises subject to regulation under the Clean
25 Indoor Air Act shall not be subject to a penalty if any person

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1 therein is in violation of the Clean Indoor Air Act as long as
2 the owner, manager or operator has posted signs, implemented
3 the appropriate policy and informed the individual that he is
4 in violation of the Clean Indoor Air Act. "

5 Section 9. A new section of the Clean Indoor Air Act is
6 enacted to read:

7 "[NEW MATERIAL] PENALTIES. --Any person over the age of
8 eighteen who commits an unlawful act under any of the
9 provisions of the Clean Indoor Air Act shall be subject to:

- 10 A. a fine in an amount of one hundred dollars
11 (\$100) for the first violation of the Clean Indoor Air Act
12 within any consecutive twelve-month period;
- 13 B. a fine in an amount of two hundred dollars
14 (\$200) for the second violation of the Clean Indoor Air Act
15 within any consecutive twelve-month period; and
- 16 C. a fine of five hundred dollars (\$500) for the
17 third and each subsequent violation of the Clean Indoor Air Act
18 within any consecutive twelve-month period. "

19 Section 10. A new section of the Clean Indoor Air Act is
20 enacted to read:

21 "[NEW MATERIAL] NON-RETALIATION. --A person or employer
22 shall not discharge, refuse to hire or in any manner retaliate
23 against an employee, applicant for employment or customer
24 because that employee, applicant or customer exercises any
25 rights afforded by the Clean Indoor Air Act or reports or

1 attempts to prosecute a violation of that act."

2 Section 11. A new section of the Clean Indoor Air Act is
3 enacted to read:

4 "[NEW MATERIAL] EXPLICIT NON-PREEMPTION. -- Nothing in the
5 Clean Indoor Air Act shall be construed to preempt or in any
6 manner preclude specific provisions of a county or municipal
7 smoking ordinance; provided that the smokefree provisions of
8 such a county or municipal ordinance are inclusive of all
9 minimum standards and provisions for smokefree areas within the
10 Clean Indoor Air Act. "

11 Section 12. REPEAL. -- Sections 24-16-5 through 24-16-11
12 NMSA 1978 (being Laws 1985, Chapter 85, Section 5 through 11)
13 are repealed.